
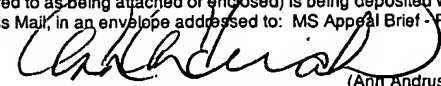
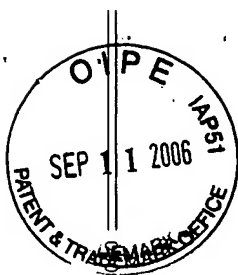




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TRANSMITTAL OF APPEAL BRIEF			Docket No. IDS-17102/14
In re Application of: Frank Venegas, Jr.			
Application No. 10/798,635	Filing Date March 11, 2004	Examiner A. Manaf	Group Art Unit 3635
Invention: EXPLOSION-ABSORBING PANELS AND WALL STRUCTURES			
<p style="text-align: center;"><b><u>TO THE COMMISSIONER OF PATENTS:</u></b></p> <p>Transmitted herewith is the Appeal Brief in this application, with respect to the Notice of Appeal filed: <u>July 7, 2006</u>.</p> <p>The fee for filing this Appeal Brief is <u>\$ 250.00</u>.</p> <p><input type="checkbox"/> Large Entity      <input checked="" type="checkbox"/> Small Entity</p> <p><input type="checkbox"/> A petition for extension of time is also enclosed.</p> <p>The fee for the extension of time is _____.</p> <p><input checked="" type="checkbox"/> A check in the amount of <u>\$ 250.00</u> is enclosed.</p> <p><input type="checkbox"/> Charge the amount of the fee to Deposit Account No. <u>07-1180</u>. This sheet is submitted in duplicate.</p> <p><input type="checkbox"/> Payment by credit card. Form PTO-2038 is attached.</p> <p><input checked="" type="checkbox"/> The Director is hereby authorized to charge any additional fees that may be required or credit any overpayment to Deposit Account No. <u>07-1180</u>. This sheet is submitted in duplicate.</p> <div style="text-align: right; margin-top: 20px;">Dated: <u>September 7, 2006</u></div> <div style="margin-top: 20px;"> _____ John G. Posa Attorney Reg. No.: 37,424 GIFFORD, KRASS, GROH, SPRINKLE, ANDERSON &amp; CITKOWSKI, P.C. 2701 Troy Center Drive, Suite 330 Post Office Box 7021 Troy, Michigan 48007-7021 (734) 913-9300</div>			
<p>I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the U.S. Postal Service on the date shown below with sufficient postage as First Class Mail, in an envelope addressed to: MS Appeal Brief - Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.</p> <p>Dated: <u>9-7-06</u>      Signature:  (Ann Andrusiak)</p>			



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of: Venegas, Jr.

Serial No.: 10/798,635

Group No.: 3635

Filed: March 11, 2004

Examiner: A. Manaf

For: EXPLOSION-ABSORBING PANELS AND WALL STRUCTURES

**APPELLANTS' BRIEF UNDER 37 CFR §1.192**

Mail Stop Appeal Brief  
Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

**I. Real Party in Interest**

The real party and interest in this case is Frank Venegas, Jr., Applicant and Appellant.

**II. Related Appeals and Interferences**

There are no appeals or interferences which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**III. Status of Claims**

The present application was filed with 9 claims. Claims 7 and 9 have been canceled by amendment. Claims 5, 6 and 8 have been withdrawn from consideration. Claims 1-6 and 8 are pending; however, claims 1-4 are rejected and under appeal. Claim 1 is the sole independent claim.

**IV. Status of Amendments Filed Subsequent to Final Rejection**

An after-final amendment is being filed herewith to correct problems with antecedent basis.

These amendments are reflected in the attached Appendix A - Claims on Appeal section of this brief.

**V. Summary of Claimed Subject Matter**

Independent claim 1 is directed to an energy-absorbing barrier system, comprising a plurality of spaced-apart vertical metal pipes 102, each buried below a ground surface, leaving a portion exposed above ground (Fig. 1). Two or more spaced-apart horizontal metal pipes 104, 106 are interconnected to the vertical metal pipes, creating at least one infill area. A material spanning the infill area 502 is operative to absorb at least a portion of the impact of an explosive blast. The material spanning the infill area is fastened to the horizontal or vertical pipes with mounts 508, 510 that break away upon a predetermined force. The material spanning the infill area is also tethered 504, 506 to one or more of the horizontal or vertical pipes to keep the material from uncontrolled travel upon impact. (Specification, page 3, line 11 to page 4, line 6, and page 5, line 25 to page 6, line 6).

**VI. Grounds of Objection/Rejection To Be Reviewed On Appeal**

A. The rejection of claims 1-3 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,787,603 to Norton.

B. The rejection of claim 4 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 4,787,603 to Norton in view of U.S. Publication No. 2003/0178614 to Venegas, Jr.

**VII. Argument**

A. Claims 1 and 3, wherein claim 3 stands/falls with claim 1.

Claim 1 stands rejected under 35 U.S.C. §102(b) over U.S. Patent No. 4,787,603 to Norton. Anticipation may be established only when a single prior art reference discloses, expressly or under principles of inherency, each and every element of a claimed invention. RCA Corp. v. Applied Digital Data Systems, 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). Moreover, anticipation requires the presence of all elements of a claimed invention as arranged in the claim, such that a disclosure "that 'almost' meets that standard does not 'anticipate'." Connell v. Sears, Roebuck Co., 722 F.2d 1542, 1548, 220 USPQ 193, 198 (Fed. Cir. 1983).

Claim 1 includes the limitation of "a plurality of spaced-apart vertical metal pipes, each buried below a ground surface." The pipes of Norton are not buried; indeed, a point of novelty of Norton is that the pipes are set in rounded-bottom "base units" so that the structure can be moved around.

Claim 1 further includes the limitation of a material spanning the infill area "being fastened to the horizontal or vertical pipes with mounts that break away upon a predetermined force." Norton does not have this feature and the Examiner makes no mention of the limitation. Claim 1 further includes the limitation of the material spanning the infill area "being tethered to one or more of the horizontal or vertical pipes to keep the material from uncontrolled travel upon impact." The Examiner refers to column 2, lines 5-10 of Norton, which read as follows:

"Each wall unit may include a barrier element. In one form the barrier element may comprise steel mesh or `chicken` wire. The barrier element may include wind proofing if desired. The barrier element may be attached to the frame member in any suitable manner e.g. the barrier element may be spot welded or it may be bound to the frame member by means of metal wire. Each wall unit may be formed in any convenient size and/or shape. Preferably, the wall units are substantially rectangular in outline. In one form each wall unit be substantially one meter high and 4.3 meters wide."

Apparently the Examiner is relying upon the language that "the barrier element may ... may be bound to the frame member by means of metal wire" as meeting the limitation of "a tether." But this argument is not persuasive. Appellant's tether "keep the material from uncontrolled travel upon impact." It is clear that the "metal wire" of Norton would snap and provide no control over uncontrolled travel upon impact. That Norton discloses welding as an alternative attachment mechanism supports Appellant's interpretation.

B. Claim 2

Claim 2 adds to claim 1 the limitation that "one or more of the pipes are filled with cement." Claim 2 stands rejected under 35 U.S.C. §102(b) over U.S. Patent No. 4,787,603 to Norton on the grounds that "a pipe inherently fills with cement (concrete) upon its insertion into cement." This is not true. While some cement enter into a small portion of the pipe unintentionally, it does not become "filled." To "fill" means "to pour into until no more can be received."

C. Claim 4

Claim 4 stands rejected under 35 U.S.C. §103(a) over Norton in view of U.S. Publication No. 2003/0178614 to Venegas, Jr. The Examiner argues that "it would have been obvious ... to modify

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Norton by using pipes for corrosion protection..." However, there is no support for this conclusion. Rejections based on §103 must rest on a factual basis with these facts being interpreted without hindsight reconstruction of the invention from the prior art. The examiner may not, because of doubt that the invention is patentable, resort to speculation, unfounded assumption or hindsight reconstruction to supply deficiencies in the factual basis for the rejection. See In re Warner, 379 F.2d 1011,1017,154 USPQ 173, 177 (CCPA 1967), cert. denied, 389U.S. 1057 (1968). The Federal Circuit has repeatedly cautioned against employing hindsight by using the Appellant's disclosure as a blueprint to reconstruct the claimed invention from the isolated teachings of the prior art. See, e.g., Grain Processing Corp. v. American Maize-Prods. Co., 840 F.2d 902, 907, 5 USPQ2d 1788, 1792 (Fed. Cir, 1988). "Broad conclusory statements regarding the teaching of multiple references, standing alone, are not 'evidence.'" In re Dembiczak, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999). "Mere denials and conclusory statements, however, are not sufficient to establish a genuine issue of material fact." Dembiczak, 175 F.3d at 999-1000, 50 USPQ2d at 1617, citing McElmurry v. Arkansas Power & Light Co., 995 F.2d 1576, 1578, 27 USPQ2d 1129, 1131 (Fed. Cir. 1993).

### Conclusion

In conclusion, for the arguments of record and the reasons set forth above, all pending claims of the subject application continue to be in condition for allowance and Appellant seeks the Board's concurrence at this time.

Respectfully submitted,

By: 

John G. Posa

Reg. No. 37,424

Gifford, Krass, Groh, Sprinkle,

Anderson & Citkowski, P.C.

PO Box 7021

Troy, MI 48007-7021

(734) 913-9300

Date: Sept. 7, 2006

**APPENDIX A**

**CLAIMS ON APPEAL**

1. An energy-absorbing barrier system, comprising:  
a plurality of spaced-apart vertical metal pipes, each buried below a ground surface, leaving a portion exposed above ground;  
two or more spaced-apart horizontal metal pipes interconnected to the vertical metal pipes creating at least one infill area;  
a material spanning the infill area which is operative to absorb at least a portion of the impact of an explosive blast;  
the material spanning the infill area being fastened to the horizontal or vertical pipes with mounts that break away upon a predetermined force; and  
wherein the material spanning the infill area is tethered to one or more of the horizontal or vertical pipes to keep the material from uncontrolled travel upon impact.
2. The energy-absorbing barrier system of claim 1, wherein one or more of the pipes are filled with cement.
3. The energy-absorbing barrier system of claim 1, wherein the metal pipes are steel.
4. The energy-absorbing barrier system of claim 1, further including a plastic cover over one or more of the pipes.

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**APPENDIX B**

**EVIDENCE**

None.

GIFFORD, KRASS, GROH, SPRINKLE, ANDERSON & CITKOWSKI, P.C. 2701 TROY CENTER DR., SUITE 330, P.O. BOX 7021 TROY, MICHIGAN 48007-7021 (248) 647-6000

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**APPENDIX C**  
**RELATED PROCEEDINGS**

None.